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OFFICE OF PETITIONS

In re Application of
Hiroshi Murakami, et al.
Application No. 09/349,423
Filed: July 7, 1999
Attorney Docket No. 31050.7US01

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ON PETITION

This is a decision in response to a communication filed July 1, 2004, requesting, in effect, a decision on the December 22, 2003 petition to revive the above-identified application under 37 CFR 1.137(b).

A review of the record discloses that the application became abandoned for failure to respond to a final Office action mailed April 14, 2003. It is noted that a request for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) was filed on October 14, 2003, including an appropriate 3-month extension of time. However, the request for a CPA was automatically treated as an request for continued examination (RCE) of this application under 37 CFR 1.114, since a CPA of this application was not permitted under 37 CFR 1.53(d)(1). The constructive RCE was subsequently held improper by a notice mailed November 10, 2003. Applicant was also advised that the time period set in the final Office action continued to run. On March 24, 2004, a Notice of Abandonment was mailed.

The present communication argues that a petition to revive, RCE and reply were filed on December 22, 2003, followed by a petition to withdraw the Notice of Abandonment on April 1, 2004. While the above noted communications are present in the Image File Wrapper (IFW), the communications were not forwarded to the appropriate deciding official for a decision thereon. The Office apologizes for the delay in responding. A decision on the petition filed December 22, 2003 follows.

The petition is GRANTED.

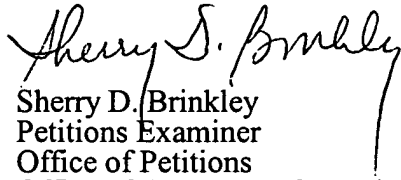
37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

The application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

It is noted that filing fees were paid for the constructive RCE on October 14, 2003 and the RCE filed on December 22, 2003. Applicant is only required to pay one filing fee to process the RCE filed in response to the final Office action mailed April 14, 2003. Accordingly, applicant may request a refund of the overpayment in writing to Mail Stop 16, Director of the US Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

The application is being forwarded to Technology Center AU 3626, for further processing of the request for continued examination under 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-9220. Inquiries relating to the processing of the RCE should be directed to the Technology Center.

A handwritten signature in cursive script, reading "Sherry D. Brinkley". The signature is written in black ink and is positioned above the printed name and title.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy